

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

21-cr-10104 (PBS)

VLADISLAV KLYUSHIN,
a/k/a “Vladislav Kliushin,”

Defendant

MOTION TO ADMIT EXHIBITS 269 A AND B

The government respectfully moves to introduce Exhibit 269A and B—charts analyzing the precipitous decline in the profitability of the defendant’s post-September 2020 trading—based on data the defense itself produced to the government, marked as an exhibit, and described to the jury in its opening statement.

The defense opened by telling the jury that, although “[i]ntrusions ended in September of 2020,” the defendant “continued to trade through May of 2021 until his arrest.” 1/3/20 Trial Tr. at 79. Counsel continued: “The hacks ended and he continued trading in much of the same companies. . . . Why would you continue trading after access to that information ended? You wouldn’t.” *Id.* at 81. The defense also produced to the government a spreadsheet, marked as Exhibit 309 and labeled “Transactions Post September 2020,” reflecting trading of the defendant, Rumiantcev, and their investors after September 2020.

The government’s expert promptly analyzed the post-September data produced by the defense and created two charts analyzing it. The charts reflect that the defendant and the other traders all but stopped trading earnings after September 2020, and the profitability of their trades plummeted. Before September, earnings trading represented 78 percent of their total trading. After

September, it represented just 7 percent. Before September, the traders earned an average of 4.4 percent per earnings trade. After September, they lost money. Before September, their win rate was 68 percent. After September, it was 42 percent.

	Trade Opened and Closed During 1/1/18 – 9/30/20	Trade Opened and Closed During 10/1/20 - 6/9/21
Traded Amount:	\$2,238,443,423	\$11,369,503
Earnings Trading % of total	78%	7%
Profit/Loss:	\$98,109,937	-\$621,862
Return per Episode:	4.4%	-5.5%
Win Rate	68%	42%

The government produced the charts to the defense last week. Tonight, for the first time, the defense challenged them, contending that Mr. Clarke lacks foundation to rely on data the defense produced, and that his charts are a summary of a summary. That is untrue. First, the defense itself produced the trading records on which Mr. Clarke relied. They are, accordingly, admissions of the defendant. Second, the defense spreadsheet does not purport to be a summary chart. It is labeled, flatly, “Transactions Post September 2020.”

Nevertheless, based on those objections Mr. Clarke promptly revised his charts using the government’s own trading data, and the government produced the revised charts to the defense within three hours of receiving the defense objection. The revised charts show the same change

from pre-September trading to post-September trading. The defense nonetheless continues to object, contending now that it has no time to analyze the revised charts.¹

The defense chose to open this case by suggesting to the jury that the defendant's post-September trading would exonerate him. In fact, the post-September trading does the opposite. It shows that when TM and DFIN finally succeeded in locking the hackers out, the defendant and his associates suddenly stopped trading around corporate earnings announcements, and lost money when they did. Having produced this evidence to the government, and opened on it before the jury, the defense cannot now preclude the government from using it (or, alternatively, from using its own data, as it has).

Conclusion

For the foregoing reasons, the government respectfully requests that the government be permitted to introduce exhibits 269A and B.

Respectfully submitted,

RACHAEL S. ROLLINS
United States Attorney

By: /s/ Stephen E. Frank
STEPHEN E. FRANK
SETH B. KOSTO
Assistant U.S. Attorneys

Date: February 7, 2023

¹ Tellingly, the defense itself produced to the government 20 minutes earlier a new summary chart that it proposes to introduce on Wednesday. The government does not object to the new chart based on late notice, though it does object on the basis that the chart is not a proper summary insofar as it leaves out data it purports to summarize.